

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petitions of the Verizon Telephone Companies)	Docket No. 06-172
For Forbearance Pursuant to 47 U.S.C. § 160(c))	
In the Boston, New York, Philadelphia,)	
Pittsburgh, Providence and Virginia Beach)	
Metropolitan Statistical Areas)	

COMPTEL’S COMMENTS IN SUPPORT OF MOTION TO DISMISS

COMPTEL, through counsel, hereby submits these comments in support of the Motion To Dismiss the above-captioned forbearance Petitions filed by ACN Communications Services *et al.* (“Moving CLECs”) on October 16, 2006.¹ The Moving CLECs make a compelling showing that Verizon has wrongly appropriated their confidential and proprietary E911 listing information in violation of their interconnection agreements. They also show that Verizon has misused confidential CLEC information that it obtained under the Protective Order in the Verizon/MCI merger proceeding to support its requests for forbearance in the six MSAs that are the focus of this proceeding.

Based on Verizon’s misuse of carrier proprietary information, the Commission should grant the Moving CLECs’ motion, dismiss Verizon’s forbearance Petitions and initiate financial forfeiture proceedings against Verizon as authorized by Section 503(b) of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 503(b). In the

¹ The Commission invited Comments on the Motion to Dismiss by Public Notice released October 18, 2006. *Pleading Cycle Established For Comments on Motion To Compel Disclosure Of Confidential Information Pursuant To Protective Order and Motion To Dismiss*, DA06-2056.

alternative, the Commission should direct Verizon to make unredacted versions of the six forbearance Petitions available to all parties that have agreed to be bound by the terms of the Protective Order entered by the Commission on September 14, 2006.²

Verizon's Petitions Should Be Dismissed

In its Petitions, Verizon claims that it is entitled to forbearance from the statutory and regulatory unbundling and dominant carrier requirements because of the allegedly extensive competition it faces in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach MSAs. The evidence of competition Verizon submitted in its Petitions consists for the most part of E911 listing data to which Verizon has access solely by virtue of its status as the E911 provider in the Boston,³ New York,⁴ Philadelphia,⁵ Pittsburgh,⁶ Providence⁷ and Virginia Beach⁸ MSAs. Verizon uses the

² *In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. §160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Protective Order, DA 06-1870 (released September 14, 2006).

³ Verizon Boston Petition at 5-7, 22-23; Lew/Verses/Garzillo Boston Declaration at 4, 5-6, 11, 12, 13, 24, 28, 29, 30, 31, 32, 33, 34, 36.

⁴ Verizon New York Petition at 5-7, 23-24; Lew/Verses/Garzillo New York Declaration at 4, 6, 10, 11, 13, 14, 25, 30, 34, 35, 36, 38, 39.

⁵ Verizon Philadelphia Petition at 5-7, 24-25; Lew/Verses/Garzillo Philadelphia Declaration at 4, 5-6, 10, 12, 18, 19, 24, 27, 28, 29, 30, 31, 33, 34, 36.

⁶ Verizon Pittsburgh Petition at 5-7, 22; Lew/Verses/Garzillo Pittsburgh Declaration at 4, 5-6, 7, 11, 21, 25, 27, 28, 29, 30, 31.

⁷ Verizon Providence Petition at 5-6, 21-22; Lew/Verses/Garzillo Providence Declaration at 4, 5-6, 10, 11, 21, 22, 24, 25, 26, 28.

⁸ Verizon Virginia Beach Petition at 5, 7, 22; Lew/Verses/Garzillo Virginia Beach Declaration at 4, 5-6, 9, 10, 15, 20, 21, 23, 24, 26, 27.

E911 listing data to identify competitive carriers, the number of residential and business lines served by each carrier and the wire centers where the carriers' customers reside.⁹ Verizon itself has described the E911 listing data contained in the confidential, unredacted versions of the Petitions that Verizon filed with the Commission as "CLEC and customer proprietary information."¹⁰ Indeed, Verizon has refused to share the E911 data with the parties who have agreed to be bound by the Protective Order on the grounds that it has a duty to protect from disclosure the "CLEC and customer proprietary information" used in its Petitions.¹¹

The Moving CLECs ask the Commission to dismiss the Verizon forbearance Petitions because Verizon's use of their proprietary information in those Petitions violates the terms of their interconnection agreements. COMPTTEL submits that Verizon's unauthorized use of its competitors' confidential and proprietary information also violates the terms of Section 222 of the Act, 47 U.S.C. § 222. Such violations provide not only an additional basis for dismissal of the Petitions, but also a basis for instituting forfeiture proceedings against Verizon.

As Verizon is well aware, Section 222(a) of the Communications Act imposes on Verizon the duty to "protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by

⁹ See, fns. 3-8.

¹⁰ September 26, 2006 Ex Parte letter from Joseph Jackson to Marlene H. Dortch attaching September 25, 2006 letter from Sherry Ingram, Assistant General Counsel Verizon Communications, to Patrick Donovan, Bingham McCutchen, outlining Verizon's response to requests for confidential information in WC Docket 06-172 ("Ingram letter").

¹¹ *Id.*

a telecommunications carrier.” 47 U.S.C. § 222(a). Section 222(b) provides that a telecommunications carrier that obtains proprietary information from another carrier for the purpose of providing any telecommunications service shall use such information only for that purpose. 47 U.S.C. § 222(b).

Verizon has access to the E911 listing data for the customers of other carriers only because it is the E911 provider (or former provider)¹² in the MSAs for which it seeks forbearance relief. Verizon obtained the E911 listing data solely for the purpose of enabling the provision of E911 service – that is, to deliver to the PSAP a caller’s name, address and telephone number. Section 222(b) prohibits Verizon from using the E911 proprietary information of other carriers for any purpose other than providing E911 service. This prohibition is so broad that Congress felt compelled to create a specific exemption to allow telecommunications carriers to provide carrier and customer proprietary information to providers of emergency services and emergency support services solely for purposes of delivering or assisting in the delivery of emergency services. 47 U.S.C. § 222(g).

Section 222 does not authorize Verizon’s use of other carriers’ E911 customer data without their permission. The fact that Verizon chose to improperly use this data to advance its self-serving deregulatory agenda demonstrates an intentional disregard for its statutory and regulatory obligations to protect sensitive customer and carrier proprietary

¹² According to the Virginia Beach Petition, Verizon is no longer the E911 provider for the City of Virginia Beach, but continues to serve as the E911 provider for the rest of the MSA. Verizon apparently retained the E911 records for the City of Virginia Beach even after it ceased serving as the provider. Thus, the Virginia Beach Petition contains E911 data for the City of Virginia Beach current as of March 2005 and for the remainder of the MSA current as of December 2005. Virginia Beach Petition at 5; Lew/Verses/Garzillo Virginia Beach Declaration at ¶8.

data. Moreover, Section 222 strictly prohibits such commercial use of carrier proprietary information as evidenced by Congress's failure to create an exemption that would allow carriers to use such data to support regulatory filings completely unrelated to providing E911 services.

In addition to the confidential E911 data, Verizon's Petitions also make reference to "confidential sources of data that showed additional CLEC fiber" that it received "[d]uring the course of the Verizon/MCI merger."¹³ The Protective Order entered in the Verizon/MCI merger docket permits anyone obtaining confidential information in that proceeding to use such information:

solely for the preparation and conduct of this license transfer proceeding before the Commission as delimited in this paragraph and paragraphs 4, 9, and 10, and any subsequent judicial proceeding arising directly from this proceeding and . . . *shall not use such documents or information* for any other purpose, including without limitation business, governmental, or commercial purposes, or *in other administrative, regulatory or judicial proceedings*.¹⁴

Verizon's use in these forbearance proceedings of CLEC confidential information obtained in the merger proceeding violates the express terms of the Verizon/MCI Protective Order. Again, Verizon is well aware that the referenced information was designated as confidential and subject to the Protective Order in the merger proceeding.

¹³ Boston Petition at 21, n. 35; Lew/Verses/Garzillo Boston at ¶9; New York Petition at 22, n. 41; Lew/Verses/Garzillo New York Declaration at ¶10; Philadelphia Petition at 22, n. 36; Lew/Verses/Garzillo Philadelphia Declaration at ¶10; Pittsburgh Petition at 20, n. 31; Lew/Verses/Garzillo Pittsburgh Declaration at ¶11; Providence Petition at 20, n. 33; Lew/Verses/Garzillo Providence Declaration at ¶9; Virginia Beach Petition at 20, n. 26; Lew/Verses/Garzillo Virginia Beach Declaration at ¶11.

¹⁴ *In the Matter of Verizon Communications Inc. and MCI, Inc. Applications For Approval of Transfer of Control*, WC Docket No. 05-75, Order Adopting Protective Order, DA 05-647, Appendix A at ¶ 2 (released March 10, 2005) (emphasis added).

Pursuant to Section 503(b) of the Act, the Commission may impose financial forfeitures on common carriers like Verizon that willfully fail to comply with any provision of the Act or order of the Commission. 47 U.S.C. §503(b). Verizon's intentional use of CLEC confidential and proprietary data to support its forbearance Petitions constitutes a willful failure to comply with both the Act and the Commission's Protective Order entered in the Verizon/MCI merger proceeding. In testimony delivered earlier this year to the House Committee on Energy and Commerce, Chairman Kevin Martin expressed deep concern about violations of the *customer* proprietary network information provisions of Section 222 and stated that the Commission "will take strong enforcement action to address any noncompliance by telecommunications carriers with the customer proprietary network information" obligations under Section 222(c).¹⁵ There is no reason for the Commission not to take equally strong enforcement action to address noncompliance by telecommunications carriers with the *carrier* proprietary information obligations under Section 222(b).

Verizon should not be permitted to benefit from the misuse of other carriers' confidential information in violation of its statutory obligations and the express terms of the Verizon/MCI Protective Order. In addition to any financial penalties the Commission might impose in a forfeiture proceeding, the Commission must dismiss the Verizon Petitions or, at the very least, strike from the Petitions the E911 listing data and any other

¹⁵ Written Statement of Kevin J. Martin, Chairman, Federal Communications Commission, Hearing on Phone Records For Sale: Why Aren't Phone Records Safe From Pretexting at 2, before the Committee on Energy and Commerce, U.S. House of Representatives, February 1, 2006, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-263577A1.pdf.

third party proprietary information on which they rely.¹⁶ Verizon would be hard pressed to argue that it would be unfairly prejudiced if such material were stricken from the record for at least two reasons. First, Verizon contends that it has provided interested parties sufficient information to evaluate its claims about the level of competition in each of the MSAs even without the redacted information.¹⁷ Second, Verizon had no right to access or use the carrier proprietary information in violation of valid statutory requirements to begin with.

A failure to take strong enforcement action against Verizon may have unintended consequences that will impair the Commission's ability to use confidential information in future adjudicatory or rulemaking proceedings. First, a failure to act would send the wrong signal that the Commission believes that customer proprietary information is entitled to greater protection than carrier proprietary information despite the fact that no such distinction is found in the statute. Second, carriers will be reluctant to furnish confidential information to the Commission knowing that recipients of that information may violate Section 222 of the Act and the Commission's own Protective Orders with impunity.

**If the Commission Does Not Dismiss The Verizon Petitions,
It Must Compel Production of the Unredacted Petitions**

If the Commission somehow determines that Verizon's misuse of the CLEC and customer confidential information is permissible, it must direct Verizon to make

¹⁶ To the extent Commission staff has already reviewed the unredacted versions of the Verizon Petitions, striking the confidential carrier information from the record alone will not remedy the adverse effects of the violation.

¹⁷ Ingram letter.

unredacted versions of the Petitions available to all parties who have executed the Protective Order in this proceeding.

As noted above, Verizon claims that it is entitled to forbearance from the statutory and Commission unbundling and dominant carrier requirements because of the extensive competition it faces in the six MSAs that are the subject of its Petitions. Although the Commission adopted a Protective Order in this proceeding, Verizon has refused to make available to parties that have agreed to be bound by the terms of the Protective Order any third party confidential data on which its Petitions rely. Verizon has taken the position that it is only required to disclose (i) its own proprietary data; (ii) competitive provider data at an aggregate level; and (iii) identifiable competitive provider and customer data only to counsel for the competitive provider or customer.¹⁸ Thus, Verizon claims the right to use “CLEC and customer proprietary information”¹⁹ in support of its arguments that the six MSAs are sufficiently competitive to warrant forbearance from unbundling and dominant carrier regulation, but to redact that same information from the versions of the Petitions made available on the public record and even to the parties signing the Protective Order. The Commission cannot tolerate Verizon’s attempt to shield from critical analysis the data on which it relies to justify forbearance. For this reason, and in the event that the Commission does not dismiss the Verizon Petitions outright or strike the third party confidential information therefrom, COMPTTEL supports the Motion To Compel Disclosure of Confidential Information Pursuant To Protective Order filed by Broadview, *et al.* on October 11, 2006.

¹⁸ Ingram letter.

¹⁹ *Id.*

The Commission's decision on Verizon's Forbearance Petitions will have a significant impact on consumers and end users living in and doing business in some of the largest MSAs in the country and on telecommunications carriers operating in those MSAs. As a result, the Commission must ensure that this proceeding is open to the widest public participation and that it affords interested parties the fullest opportunity to submit meaningful comments. If the Commission were to condone Verizon's use of the confidential and proprietary information of customers and other carriers to make its own case and allow it to withhold that information from any party wishing to comment on Verizon's case, it will deny all parties except Verizon meaningful notice and opportunity to comment on the record on which the Commission will make its decision in violation of the Administrative Procedure Act.²⁰

Interested parties willing to execute the Protective Order have a statutory right to offer their perspectives on the entirety of Verizon's unredacted Petitions. The Commission should summarily reject Verizon's suggestion that this proceeding be conducted in a Star Chamber and that the Commission's decision be based on evidence known only to Verizon and the Commission. In order to preserve the rights of interested parties to evaluate and challenge the entirety of Verizon's assertions that it is entitled to

²⁰ The Commission has apparently elected to treat this matter as a rule making. See Pleading Cycle Established For Comments On Verizon's Petitions For Forbearance In The Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, WC Docket No. 06-172, DA06-189 (released September 14, 2006) at 2 (inviting comments pursuant to Sections 1.415 and 1.419 of the Commission's Rules). Sections 1.415 and 1.419 establish the rules for filing comments and reply comments in rulemaking proceedings. The Administrative Procedure Act requires that the Commission give interested persons an opportunity to participate in rulemaking proceedings through the submission of written data, views and arguments. 5 U.S.C. §553. It is impossible for interested parties to present informed data, views and arguments in response to Verizon's evidence without knowing what that evidence is.

forbearance, the Commission must either strike from the record all third party data that Verizon has redacted from its Petitions or make those materials available to all parties executing the Protective Order.

Conclusion

For the foregoing reasons, the Commission should grant the Moving CLECs' Motion To Dismiss and institute forfeiture proceedings against Verizon. In the alternative, the Commission must either strike the confidential third party data from the record or order Verizon to make unredacted copies of the six forbearance Petitions available to all parties that execute the Protective Order in this proceeding.

Respectfully submitted,



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October 30, 2006